

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 57191-5-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
GEORGE WESLEY WARD,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: July 3, 2006

PER CURIAM — A jury found George Wesley Ward guilty of unlawful manufacturing of a controlled substance (methamphetamine) while armed with a firearm. On appeal, Ward contends that the trial court abused its discretion in excluding evidence related to his duress defense, and that insufficient evidence supports the firearm special verdict. As additional grounds for relief, Ward contends that an improper jury instruction and the composition of his jury warrant reversal of his conviction. Finding no error, we affirm.

FACTS

George Wesley Ward was charged by an amended information with unlawful manufacture of a controlled substance while armed with a firearm.

During a pretrial hearing, defense counsel asked Detective Jacob McMillen about an individual named Walter Haavik. Counsel asked whether Ward said he was afraid of Haavik, and about Haavik's reputation. The State

then moved to suppress character evidence about Haavik. Ward claimed such evidence was relevant to his defense of duress, which Ward then asserted for the first time. The trial court ruled that the evidence could not be brought up in the State's case in chief, but might be admissible in the defense case.

The following testimony and evidence was presented at trial. On May 11, 2004, police officers from the Bonney Lake Police Department and Washington State Patrol served a search warrant on Ward's residence and the surrounding property. Ward, the sole occupant of the property, was present during the search.

The police found two methamphetamine laboratories on the property, one in Ward's garage and one in a trailer on the property. In Ward's residence, the police found a box with 91 empty pseudoephedrine bottles; a video monitor for surveillance cameras; two scales, two metal scoops, a razor blade, a plastic container with drug paraphernalia, and numerous baggies. Many of the items displayed a white powder residue that tested positive for methamphetamine. Police also found a ledger containing (1) a list of items used in the production and manufacture of methamphetamine, (2) notes regarding the production of methamphetamine, and (3) notes regarding yields, splits, amount of cash invested, the return, and the net per grams.

Detective McMillen testified that pseudoephedrine is an ingredient in methamphetamine production and scales are commonly used to weigh the methamphetamine during the manufacturing, processing, and distribution

phases.

The police also found four firearms in Ward's residence, one leaning on the wall between the master bedroom and kitchen, and three in the master bedroom. Ward had a fully operational semiautomatic handgun in his top dresser drawer, and two rifles in a bag near the bed. Large capacity banana-style ammunition clips were found in the bag with the rifles, along with the ammunition for these two firearms. Detective McMillen testified that the rifles in the bag "were ... within reach, and the ammunition was laying [sic] right next to the rifles already in the clips." 2 Verbatim Report of Proceedings (VRP) (April 26, 2005) at 153. This was also true for the pistol in the top dresser drawer in the bedroom. Detective McMillen further testified that these firearms "were located inside the bedroom where [Ward] stated he had come from. One of those clips can be inserted into the rifle and the trigger pulled in just a matter of seconds." Id.

After being advised of his Miranda¹ rights, Ward agreed to speak to the police. Detective McMillen asked Ward if he had any information about the methamphetamine manufacturing. Ward said that he was aware of the manufacturing that was going on and he admitted he was involved in it, though he refused to specify what his exact role was.

Ward told Detective McMillen that Haavik provided the trailers and operated the lab. Ward also told Officer Kearney that he was happy he got

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

arrested because he felt he needed to turn his life around, that he was doing illegal things to get money, and that he was using methamphetamine. He stated that he knew about the lab in the back yard, that Haavik was responsible for it, and that it had been in operation for three weeks. Ward told Officer Kearney that he was afraid of Haavik, but never said that he had been threatened by him.

Ward testified that Haavik brought the trailers to the property. He said Haavik told him to stay away from the trailers and he would not get hurt. Ward said that Haavik was at his property almost nightly and he would leave and come home the next day. Ward told the jury he knew Haavik was making drugs on his property. He admitted he used methamphetamine every day and that he owned one of the scales to weigh drugs he purchased. Ward testified that he was afraid of Haavik because he threatened to expose Ward's drug habit, shoot him in the knee, and hurt his son if he called the police. Ward claimed that the firearms were brought to his house by someone else the day before his arrest. He claimed others put the guns in the closet and that he did not know how the handgun ended up in his dresser drawer.

On cross-examination, Ward admitted he helped conceal evidence of the manufacturing that was going on at his property. He admitted he could have called the police every night when he left his property, but he did not do so. Ward also admitted that Haavik only threatened him three weeks before his arrest.

At the end of Ward's case, defense counsel informed the trial court he

had been unable to reach Detective Kearsing. Both defense counsel and the prosecutor had unsuccessfully tried to reach the detective. During his offer of proof, defense counsel told the trial court he had not been able to “flush” out the issues with Detective Kearsing, but that he was “hoping” the detective's “testimony was something of interest with the issue of the threats.” 4 VRP (May 2, 2005) at 462-633. Defense counsel conceded that he did not “know that that information was going to be ruled admissible anyway.” Id. The trial court declined to delay the trial any further for the defense to secure the detective's presence, finding that “[t]here's no indication that the officer had personal knowledge of anything.” Id.

The jury found Ward guilty as charged and that he was armed with a firearm when he committed the crime. The trial court imposed a standard range sentence, including 36 months for the firearm enhancement.

Ward appeals.

DISCUSSION

I. Right to Present a Defense

Ward contends that his state and federal rights to present a defense and to confront witnesses against him were violated by the trial court's denial of Ward's request for additional time to recall one of the detectives to testify regarding Haavik.²

² In his appellate brief, Ward states that defense counsel at trial accidentally referred to Detective Kearsing instead of Detective McMillen when he requested additional time to recall a witness. The record does not support Ward's claim. Nonetheless, we address the issue as it is presented by Ward because the legal question is unaffected by the identity of the witness.

The right to confront and cross-examine adverse witnesses is guaranteed by both the federal and state constitutions. U.S. Const. amend VI; Wash. Const. art. I, § 22; Davis v. Alaska, 415 U.S. 308, 315, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); Washington v. Texas, 388 U.S. 14, 23, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). The primary and most important component is the right to conduct a meaningful cross-examination of adverse witnesses. State v. Foster, 135 Wn.2d 441, 455, 56, 957 P.2d 712 (1998). The right to confrontation must be zealously guarded. State v. Kilgore, 107 Wn. App. 160, 184-85, 26 P.3d 308 (2001). However, the right to cross-examine adverse witnesses is not absolute. Chambers v. Mississippi, 410 U.S. 284, 295, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). Courts may, within their sound discretion, deny or limit cross-examination if the evidence sought is vague, argumentative, or speculative. State v. Jones, 67 Wn.2d 506, 512, 408 P.2d 247 (1965).

Ward first points to an instance when the trial court limited Ward's cross-examination of Detective Kearsing. Defense counsel asked Detective Kearsing where he had seen Haavik in the past. The trial court instructed defense counsel to move on, but indicated that the issue might be addressed later.

Ward fails to demonstrate any error by the trial court in this instance. Ward was not prohibited from asking questions to test the perception, memory and credibility of the witness. With respect to his duress claim, Ward was free to ask questions regarding Haavik during his case in chief. Ward has therefore failed to show a manifest abuse of discretion in the trial court's limitation of cross-

examination.

Ward also points to the colloquy at the end of the trial during which Ward asked for additional time in order to recall one of the detectives. The trial court specifically asked defense counsel what he was asking the court to do. After making his offer of proof and conceding that the evidence would not be admissible unless it was based on personal knowledge, Ward's attorney did not ask the court for any relief.

Ward erroneously presents this issue as though it involved a ruling excluding evidence. However, the evidence Ward purportedly sought to introduced was not available. In fact, Ward did not know what the detective's testimony would be. As such, the record indicates only that Ward was trying to get more time from the trial court to find out what the detective's testimony would be. The trial court did not rule on whether the detective's testimony was admissible. Indeed, the witness was not present to either allow a more definitive offer of proof or to testify. Accordingly, we reject Ward's claim that he was denied the right to present a defense. The trial court did not abuse its discretion when it refused to delay the trial.

II. Evidence Sufficient to Support Weapon Enhancement

Ward also argues there was insufficient evidence to support the firearm enhancement conviction. This court determines the sufficiency of the evidence by deciding whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable

doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). When a defendant challenges the sufficiency of the evidence, he admits the truth of the State's evidence and all inferences that may be reasonably drawn from the evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). This court defers to the fact finder's resolution of conflicting testimony, witness credibility, and persuasiveness of the evidence. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

A person is "armed" under the statute "if a weapon is easily accessible and readily available for use, either for offensive or defensive purposes." State v. Schelin, 147 Wn.2d 562, 567, 55 P.3d 632 (2002). There must be a nexus between the defendant, the crime, and the weapon. Id. at 568.

Ward relies on State v. Gurske, 155 Wn.2d 134, 118 P.3d 333 (2005), for the proposition that there was insufficient evidence to find that he had a firearm that was easily accessible and ready for use. In Gurske, the defendant was arrested for driving with a suspended license. In a search incident to arrest, the police found a back pack behind the driver's seat where Gurske had been sitting. Id. at 136. Inside the zipped back pack police found a Coleman torch, a holstered handgun under the torch, and three grams of methamphetamine. Id. The court held that there was insufficient evidence to show that the firearm was easily accessible and readily available for use because Gurske would have had to exit the vehicle or move over into the passenger seat to reach the gun. Id. at 143.

Gurske is distinguishable from this case. Here, the uncontroverted testimony was that the two rifles in the bedroom were “within reach,” and that the ammunition was “already in the clips,” which were lying right next to the rifles. Further, the detective testified that the firearms were in the bedroom Ward had come from and, “[o]ne of those clips can be inserted into the rifle and the trigger pulled in just a matter of seconds.” Viewed in the light most favorable to the State, the accessibility and availability of the firearms to Ward was supported by overwhelming evidence.

There is also a connection between the firearms and the manufacturing of methamphetamine. Schelin, 147 Wn.2d 562, is on point. In that case, Schelin had a loaded pistol in a holster hanging on a nail on the wall in the basement where he had a marijuana growing operation. The court found that the jury could infer that Schelin was using the weapon to protect his marijuana grow operation: “Schelin stood near the weapon when police entered his home and could very well have exercised his apparent ability to protect the grow operation with a deadly weapon, to the detriment of the police.” Id., at 574-75.

Likewise, Ward had control over the premises where the labs were located and, just like Schelin, he could have used the firearms to protect the labs as the police had not yet discovered or removed them. Ward was addicted to methamphetamine and was involved in its illegal manufacture on those premises. The evidence of the surveillance cameras supports an inference that Ward was watching over the drug production while Haavik was absent. While

the methamphetamine labs themselves were not in the house, there was evidence in the house of both preparation (scored pill bottles and a ledger with methamphetamine production-related lists), and distribution (scales and baggies with methamphetamine residue). As such, it stands to reason that Ward used the firearms to protect his contraband, his residence, and himself. Taken in the light most favorable to the State, it is "reasonable to infer that the purpose of so many loaded guns was to defend the manufacturing site in case it was attacked." State v. Simonson, 91 Wn. App. 874, 883, 960 P.2d 955 (1998).³

III. Additional Grounds for Relief

Ward also contends that his Fifth Amendment right to due process was violated by the trial court's submission to the jury of an instruction defining an accomplice. Ward misstates this as an instruction on a lesser-included offense. Moreover, Ward's trial counsel approved the instruction and Ward does not argue that he received ineffective assistance of counsel. We find no merit in this claim.

Ward also argues that his right to trial by a jury of his peers was violated because all of the jury members were Caucasian women. First, we note that a jury of one's peers does not mean a jury of persons of identical race, gender, or

³ Ward's reliance on State v. Valdobinos, 122 Wn.2d 270, 858 P.2d 199 (1993), and State v. Call, 75 Wn. App. 866, 880 P.2d 571 (1994), is misplaced. In Valdobinos, there was evidence of an unloaded firearm under the bed and no more. The Supreme Court held that mere presence of a firearm at the scene is insufficient to show the defendant was "armed." Valdobinos at 282. Conversely, Ward's firearms were within his reach and ammunition clips for the rifles were loaded and located in the same bag as the rifles, making them ready to fire within seconds. Call is also distinguishable. In that case, this Court held that the "trial court's findings ... failed to address the essential question, namely whether any of the weapons was easily accessible and readily available." Call at 869. Here, this issue was expressly addressed in the testimony of Detective McMillen.

similar background. See People v. Henry, 55 Misc. 2d 134, 284 N.Y.S.2d 726, 730 (1967). Moreover, because Ward presents no argument or authority in support of this argument, we will not further address it. State v. Van Auken, 77 Wn.2d 136, 142, 460 P.2d 277 (1969).

Affirmed.

FOR THE COURT:

Dwyer, J.

Columan, J.

Elliott, J.